



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.199/CTK/2024
Assessment Year : 2020-2021

Rajat Kumar Baliarsinha, NH-5, Manguli, Chowdwar, Cuttack-754024	Vs.	DCIT, circle-1(1), Cuttack
PAN/GIR No.ACGPB 0384 G		
(Appellant)	..	(Respondent)

Assessee by : Shri S.K.Sarangi, CA

Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 25/07/2024

Date of Pronouncement : 25/07/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 29.2.2024 in Appeal No. NFAC/2019-20/10195776 for the assessment year 2020-2021.

2. Shri S.K.Sarangi, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the issue in this appeal was in respect of sale of land owned by the assessee, more so, purchased by the assessee in the year 2001 and part of which was acquired by National Highway

Authority of India (NHAI) during the assessment year 2019-2020 but the compensation of which was received during the relevant assessment year and on account of the acquisition of land by NHAI, the assessee left with no alternative option had to sell the balance of the land. It was the submission that the land sold by the assessee was cut into plots, roads were also demarcated so that the assessee could get better price. It was the submission that the assessee had offered the income therefrom as liable for long term capital gain, whereas the Assessing Officer treated the same as adventure in the nature of trade. It was the submission that the Assessing Officer had recognized that the assessee had incurred an expenditure of Rs.28,00,000/- in respect of laying of road, filling/leveling of land and construction of compound wall in respect of the demarcated plots of land sold. It was the submission that the Assessing Officer after recognizing Rs.28,00,000/- incurred by the assessee, held that the fact that the assessee had incurred such expenditure would show that the transaction of the sale of land by the assessee was adventure in the nature of trade. It was the further submission that after utilizing the expenditure incurred by the assessee for the development of the land, to hold the sale as adventure in the nature of trade, the Assessing officer disallowed Rs.28,00,000/- stating that adequate proof in regard to incurring the same was not produced. It was the further submission that the assessee has also treated the compensation received from NHAI in respect of compulsory acquisition

of the land of the assessee as liable for long term capital gain and has also offered the same to tax. Ld AR referred to CBDT Circular No.36 of 2016 dated 25.10.2016, wherein, it is clarified the taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('RFCTLAAR Act') and section 96 of the Act says that no income tax shall be leviable under the provisions of Income tax Act. It was the submission that the compensation received by the assessee was not liable to be taxed and this mistake of the assessee has also not been corrected by the Assessing Officer, even though the Assessing Officer was well aware and has also recognized in the assessment order that part of the land of the assessee was compulsorily acquired by NHAI. It was the submission that the issues in this appeal are required to be restored to the file of the Assessing Officer and the Assessing Officer may be directed to determine the income of the assessee from the sale of land as liable for long term capital gains and not to be treat the same as adventure in the nature of trade.

4. In reply, Id Sr DR vehemently supported the order of the Assessing Officer and Id CIT(A). It was the submission that in view of the provisions of Section 140 of the Income tax Act, the income of the assessee cannot be assessed below the returned income and the Assessing Officer could not have given the benefit of the compulsory acquisition of the land by NHAI as

exempt. It was the submission that the fact that the assessee has incurred expenditure in respect of the development of the land shows that the activity of the assessee in plotting the land and selling the same was actually adventure in the nature of trade and the Assessing Officer has rightly treated the same as business income of the assessee.

5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that the assessee has admittedly not represented itself before the Id CIT(A). All facts have also not been considered by the Assessing Officer. There are mistakes in the income as offered by the assessee also. This being so, in the interest of justice, we are of the considered view that the issues in this appeal must be restored to the file of the Assessing officer for readjudication after granting the assessee adequate opportunity of being heard and we do so.

6. Considering the submission of Id AR, it is also directed that it is a fact that the assessee had purchased the land in 2001 and NHAI has compulsorily acquired part of the said land towards development of National Highway No.56. It is also admitted fact that the assessee has offered the capital gains in respect of compulsory acquisition of the land by NHAI. Here, we are live to the fact that the assessee has itself offered the income under the head "Long term capital gains". The Income Tax Officer is not just a tax collector he is also a tax assessor. He is duty bound to advise

and grant such benefits to the assessee which are due to the assessee even assuming the mistake has been done by the assessee. The mistake of the assessee in its computation should not be taken undue benefit of. This being so, as also in view of the various decisions of Hon'ble apex Court, wherein, it has been categorically held that if on account of evidence, the assessee is entitled to certain relief and consequent to such relief, the assessed income goes below the returned income, such relief cannot be denied to the assessee. This being so, the Assessing Officer is directed to examine whether the land of the assessee acquired by NHAI does fall in the criterion specified in the CBDT Circular No. No.36 of 2016 dated 25.10.2016(supra) and if it is found that the assessee is entitled to the exemption, such exemption shall be granted to the assessee. It would also be worthwhile here to mention that when the land was acquired by NHAI and the assessee has offered the compensation amount under the head "Long term capital gains", and it was accepted by the Assessing Officer but when the balance area of the land was sold, the Assessing officer turned around to say that it was adventure in the nature of trade. This action of the Assessing Officer is not permissible. This being so, the Assessing Officer shall determine the income from the sale of balance portion of the land, which was acquired by the assessee in 2001 and sold during the relevant assessment year under the head "Long term capital gains".

7. It is also recognized that the Assessing Officer has accepted that the assessee has claimed expenditure of Rs.28,00,000/- towards development of the said land but has denied the expenditure stating the reasons given in para 10 of his order, the disallowance of Rs.28,00,000/- as made by the Assessing Officer is consequently reduced to Rs.14,00,000/-. Liberty is also granted to the assessee to produce all such evidences, as required by him to substantiate his further claims before the Assessing officer in the course of set aside proceedings.

8. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 25/07/2024.

SD/-

(Manish Agarwal)

ACCOUNTANT MEMBER

Cuttack; Dated 25/07/2024

B.K.Parida, SPS (OS)

SD/-

(George Mathan)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The appellant: Rajat Kumar Baliarsinha,
NH-5, Manguli, Chowdwar, Cuttack-754024
2. The Respondent: DCIT, circle-1(1),
Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack